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Ms. Marlene Dortch, Secretary Federal Communications Commission The Portals, TW-A325 445 12<sup>th</sup> Street, SW Washington, D.C. 20554

Re: Ex Parte Presentation – Review of the Section 251 Unbundling Obligations of

Incumbent Local Exchange Carriers; CC Docket Nos. 01-338, 96-98, 98-147

Dear Ms. Dortch:

On December 18, 2003, Dave Baker, Vice President, Law and Policy for EarthLink, Inc. and Mark O'Connor of Lampert & O'Connor, P.C. met with Christopher Libertelli, Senior Legal Advisor to Chairman Powell, and met with Daniel Gonzalez, Senior Legal Advisor to Commissioner Martin, to discuss the above referenced proceedings.

During these meetings, EarthLink discussed the issues raised in its October  $2^{nd}$  Petition for Reconsideration of the line sharing portion of the FCC's Report and Order and Order on Remand released August 21, 2003 ("R&O") and previously filed positions in the above-referenced dockets. EarthLink outlined several issues raised in its Petition that compel the Commission to reconsider its decision. EarthLink urged the Commission to resolve the line sharing reconsideration before the DC Circuit rules in the pending judicial appeal of the R&O. Especially given the likely remand of the UNE-P issues, the Commission should not have limited data CLEC competition to just that portion of the market served by line splitting and UNE-P (i.e., a small fraction of the retail market). With Mr. Libertelli, EarthLink explained that the Commission could address line sharing while the matter was also pending in the judicial appeal of the R&O. With Mr. Gonzalez, EarthLink noted that the transition mechanism established will not adequately protect subscribers or ISPs from the disruption in service that may result from the elimination of line sharing.

Pursuant to the Commission's rules, one copy of this memorandum is being filed electronically in each of the above-referenced dockets for inclusion in the public record. Please do not hesitate to call me if you have any questions.

Respectfully submitted,

/s/ Mark J. O'Connor Counsel for EarthLink, Inc.